

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2008-1496-EAQ-E TCEQ ID: RN105354211 CASE NO.: 36556
RESPONDENT NAME: OCEAN2OCEAN, LLC

Page 1 of 2

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: 2280 Bulverde Road, Bulverde, Comal County

TYPE OF OPERATION: multi-use land development site

SMALL BUSINESS: ☒ Yes ☐ No

OTHER SIGNIFICANT MATTERS: Two complaints were received. The complaints alleged unauthorized commencement of construction over the Edwards Aquifer Recharge Zone at Bulverde. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: The complainants have not indicated a desire to protest this action or speak at Agenda. No one other than the ED and the Respondent expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired September 7, 2009. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Ms. Rebecca M. Combs, Litigation Division, MC 175, (512) 239-6939
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

TCEQ Enforcement Coordinator: Mr. Samuel Short, Water Enforcement Section, MC 149, (512) 239-5363

TCEQ Regional Contact: Mr. Tom Haberle, San Antonio Regional Office, MC R-13, (210) 403-4050

Respondent: Mr. Jim De La Garza, Member, Ocean2Ocean, LLC, P.O. Box 592479, San Antonio, Texas 78259; Mr. Jim De La Garza, Member, Ocean2Ocean, LLC, 3325 Twin Peaks, San Antonio, Texas 78261

Respondent's Attorney: Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Dates of Complaints Relating to this Case: April 15, 2008 and May 6, 2008</p> <p>Date of Investigation Relating to this Case: May 13, 2008</p> <p>Date of NOE Relating to this Case: August 28, 2008</p> <p>Background Facts: The EDP RP was filed March 20, 2009, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that the Respondent received notice of the EDP RP. The Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: The Respondent's Water Pollution Abatement Plan ("WPAP") was approved on October 22, 2008.</p> <p>EAQ: Failed to obtain approval of a WPAP prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone [30 TEX. ADMIN. CODE § 213.4(a)(1)].</p>	<p>Total Assessed: \$48,450</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Due to General Revenue: \$48,450</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p>Site Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent's WPAP was approved on October 22, 2008.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

DATES	Assigned	8-Sep-2008	Screening	17-Sep-2008	EPA Due	
	PCW	4-Feb-2009				

RESPONDENT/FACILITY INFORMATION			
Respondent Ocean2Ocean, LLC			
Reg. Ent. Ref. No. RN105354211			
Facility/Site Region		13-San Antonio	Major/Minor Source Major

CASE INFORMATION			
Enf./Case ID No.	36556	No. of Violations	1
Docket No.	2008-1496-EAQ-E	Order Type	1660
Media Program(s)	Edwards Aquifer	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Samuel Short
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum		\$0	Maximum \$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** \$47,500

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 2.0% Enhancement **Subtotals 2, 3, & 7** \$950

Notes

An enhancement is recommended for having one NOV for non-similar violations within the last five years.

Culpability

No

0.0% Enhancement

Subtotal 4

\$0

Notes

The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments

Subtotal 5

\$0

Economic Benefit

0.0% Enhancement*

Subtotal 6

\$0

Total EB Amounts \$321

Approx. Cost of Compliance \$6,500

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7

Final Subtotal

\$48,450

OTHER FACTORS AS JUSTICE MAY REQUIRE

0.0%

Adjustment

\$0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount

\$48,450

STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty

\$48,450

DEFERRAL

0.0%

Reduction

Adjustment

\$0

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral not offered for non-expedited settlement.

PAYABLE PENALTY

\$48,450

Screening Date 17-Sep-2008

Docket No. 2008-1496-EAQ-E

PCW

Respondent Ocean2Ocean, LLC

Policy Revision 2 (September 2002)

Case ID No. 36556

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN105354211

Media [Statute] Edwards Aquifer

Enf. Coordinator Samuel Short

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOV's with same or similar violations as those in the current enforcement action (number of NOV's meeting criteria)	0	0%
	Other written NOV's	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 2%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

An enhancement is recommended for having one NOV for non-similar violations within the last five years.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 2%

Screening Date 17-Sep-2008		Docket No. 2008-1496-EAQ-E		PCW	
Respondent Ocean2Ocean, LLC		<small>Policy Revision 2 (September 2002)</small>			
Case ID No. 36556		<small>PCW Revision June 12, 2008</small>			
Reg. Ent. Reference No. RN105354211					
Media [Statute] Edwards Aquifer					
Enf. Coordinator Samuel Short					
Violation Number		<div style="border: 1px solid black; padding: 2px; text-align: center;">1</div>			
Rule Cite(s)		<div style="border: 1px solid black; padding: 2px; text-align: center;">30 Tex. Admin. Code § 213.4(a)(1)</div>			
Violation Description		<div style="border: 1px solid black; padding: 5px;">Failed to obtain approval of a Water Pollution Abatement Plan ("WPAP") prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone. Specifically, the investigator observed evidence of ongoing construction on approximately 22 acres, including areas that were cleared, graded, and staked, areas of brush, tree, and dirt piles.</div>			
Base Penalty					<div style="border: 1px solid black; padding: 2px; text-align: center;">\$10,000</div>

>> Environmental, Property and Human Health Matrix					
OR	Harm				
	Release	Major	Moderate	Minor	
	Actual	<div style="border: 1px solid black; width: 100px; height: 15px;"></div>	<div style="border: 1px solid black; width: 100px; height: 15px;"></div>	<div style="border: 1px solid black; width: 100px; height: 15px;"></div>	Percent <div style="border: 1px solid black; padding: 2px; text-align: center;">0%</div>
Potential	<div style="border: 1px solid black; width: 100px; height: 15px;"></div>	<div style="border: 1px solid black; width: 100px; height: 15px;"></div>	<div style="border: 1px solid black; width: 100px; height: 15px;"></div>		
>> Programmatic Matrix					
	Falsification	Major	Moderate	Minor	
	<div style="border: 1px solid black; width: 100px; height: 15px;"></div>	<div style="border: 1px solid black; width: 100px; height: 15px; text-align: center;">x</div>	<div style="border: 1px solid black; width: 100px; height: 15px;"></div>	<div style="border: 1px solid black; width: 100px; height: 15px;"></div>	Percent <div style="border: 1px solid black; padding: 2px; text-align: center;">25%</div>
Matrix Notes	<div style="border: 1px solid black; padding: 5px; min-height: 30px;">100% of the rule requirement was not met.</div>				
Adjustment					<div style="border: 1px solid black; padding: 2px; text-align: center;">\$7,500</div>
					<div style="border: 1px solid black; padding: 2px; text-align: center;">\$2,500</div>

Violation Events					
Number of Violation Events		<div style="border: 1px solid black; padding: 2px; text-align: center;">19</div>	Number of violation days		<div style="border: 1px solid black; padding: 2px; text-align: center;">127</div>
<small>mark only one with an x</small>	<small>daily</small>	<div style="border: 1px solid black; width: 100px; height: 15px;"></div>	Violation Base Penalty <div style="border: 1px solid black; padding: 2px; text-align: center;">\$47,500</div>		
	<small>weekly</small>	<div style="border: 1px solid black; width: 100px; height: 15px; text-align: center;">x</div>			
	<small>monthly</small>	<div style="border: 1px solid black; width: 100px; height: 15px;"></div>			
	<small>quarterly</small>	<div style="border: 1px solid black; width: 100px; height: 15px;"></div>			
	<small>semiannual</small>	<div style="border: 1px solid black; width: 100px; height: 15px;"></div>			
	<small>annual</small>	<div style="border: 1px solid black; width: 100px; height: 15px;"></div>			
	<small>single event</small>	<div style="border: 1px solid black; width: 100px; height: 15px;"></div>			
Nineteen weekly events are recommended from May 13, 2008 when the violation was first documented to the date of screening, September 17, 2008.					

Good Faith Efforts to Comply		0.0% Reduction	\$0
	<small>Before NOV</small>	<small>NOV to EDPRP/Settlement Offer</small>	
Extraordinary	<div style="border: 1px solid black; width: 100px; height: 15px;"></div>	<div style="border: 1px solid black; width: 100px; height: 15px;"></div>	
Ordinary	<div style="border: 1px solid black; width: 100px; height: 15px;"></div>	<div style="border: 1px solid black; width: 100px; height: 15px;"></div>	
N/A	<div style="border: 1px solid black; width: 100px; height: 15px; text-align: center;">x</div>	<small>(mark with x)</small>	
Notes	The Respondent does not meet the good faith criteria for this violation.		
Violation Subtotal			<div style="border: 1px solid black; padding: 2px; text-align: center;">\$47,500</div>

Economic Benefit (EB) for this violation		Statutory Limit Test	
Estimated EB Amount	<div style="border: 1px solid black; padding: 2px; text-align: center;">\$321</div>	Violation Final Penalty Total	<div style="border: 1px solid black; padding: 2px; text-align: center;">\$48,450</div>
This violation Final Assessed Penalty (adjusted for limits)			<div style="border: 1px solid black; padding: 2px; text-align: center;">\$48,450</div>

Economic Benefit Worksheet

Respondent Ocean2Ocean, LLC
Case ID No. 36556
Reg. Ent. Reference No. RN105354211
Media Edwards Aquifer
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$6,500	13-May-2008	8-May-2009	0.99	\$321	n/a	\$321
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to prepare, submit the application and obtain approval of an Edwards Aquifer WPAP. Date required is the date the violation was first documented. Final date is the expected date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$6,500

TOTAL

\$321

Compliance History

Customer/Respondent/Owner-Operator: CN603251497 Ocean2Ocean, LLC Classification: AVERAGE Rating: 1.50
Regulated Entity: RN105354211 THE VILLAGE OF BULVERDE Classification: AVERAGE Site Rating: 1.50
ID Number(s): EDWARDS AQUIFER REGISTRATION 13-07100401
Location: 2280 BULVERDE RD, BULVERDE, TX, 78163 Rating Date: 9/1/2008 Repeat Violator: NO
TCEQ Region: REGION 13 - SAN ANTONIO
Date Compliance History Prepared: September 23, 2008
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: September 23, 2003 to September 23, 2008
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Samuel Short Phone: (512) 239-5363

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
09/17/2008 (701792)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
Date: 10/18/2007 (596927)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 111, SubChapter B 111.201
5C THC Chapter 382, SubChapter D 382.085(b)
Description: Failure to conduct outdoor burning as authorized by the TCEQ rules and regulations.
- F. Environmental audits.
N/A
- G. Type of environmental management systems (EMSs).
N/A
- H. Voluntary on-site compliance assessment dates.
N/A
- I. Participation in a voluntary pollution reduction program.
N/A
- J. Early compliance.
N/A
- Sites Outside of Texas
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
OCEAN2OCEAN, LLC,
RN105354211**

§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER DOCKET NO. 2008-1496-EAQ-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty. The respondent made the subject of this Order is Ocean2Ocean, LLC ("Ocean").

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Ocean owns and operates a multi-use land development site located at 2280 Bulverde Road, Bulverde, Comal County, Texas (the "Site").
2. The Site discharged waste into or adjacent to any water in the state or committed another act that has caused or will cause pollution of any state water under the Texas Water Code.
3. During an investigation on May 13, 2008, a TCEQ San Antonio Regional Office investigator documented that Ocean failed to obtain approval of a Water Pollution Abatement Plan ("WPAP") prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone. Specifically, the investigator observed evidence of ongoing construction on approximately 22 acres, including areas that were cleared, graded and staked, areas of brush, tree and dirt piles.
4. Ocean received notice of the violation on or about September 2, 2008.
5. The Executive Director recognizes that Ocean received approval of its WPAP on October 22, 2008.

6. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against Ocean2Ocean, LLC" (the "EDPRP") in the TCEQ Chief Clerk's office on March 20, 2009.
7. By letter dated March 20, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Ocean with notice of the EDPRP. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed". The first class mail has not been returned, indicating that Ocean received notice of the EDPRP.
8. More than 20 days have elapsed since Ocean received notice of the EDPRP, provided by the Executive Director. Ocean failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Ocean is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Ocean failed to obtain approval of a WPAP prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone, in violation of 30 TEX. ADMIN. CODE § 213.4(a)(1).
3. As evidenced by Finding of Fact Nos. 6 and 7, the Executive Director timely served Ocean with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
4. As evidenced by Finding of Fact No. 8, Ocean failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Ocean and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Ocean for violations of the Texas Water Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.

6. An administrative penalty in the amount of forty eight thousand four hundred fifty dollars (\$48,450.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
7. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Ocean is assessed an administrative penalty in the amount of forty eight thousand four hundred fifty dollars (\$48,450.00) for violations of state statutes and TCEQ rules. The payment of this administrative penalty and Ocean's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality". The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Ocean2Ocean, LLC; Docket No. 2008-1496-EAQ-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. All relief not expressly granted in this Order is denied.
3. The provisions of this Order shall apply to and be binding upon Ocean. Ocean is ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.
4. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Ocean if the Executive Director determines that Ocean has not complied with one or more of the terms or conditions in this Order.

5. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
6. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF REBECCA M. COMBS

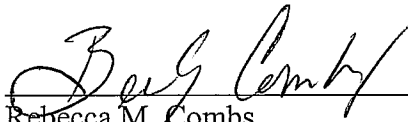
STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

"My name is Rebecca M. Combs. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the 'Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against Ocean2Ocean, LLC' (the 'EDPRP') was filed with the Office of the Chief Clerk on March 20, 2009.

I sent the EDPRP to Ocean at its last known address on March 20, 2009 via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as 'unclaimed'. The first class mail has not been returned, indicating the respondent received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

More than 20 days have elapsed since Ocean received notice of the EDPRP. Ocean failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference".

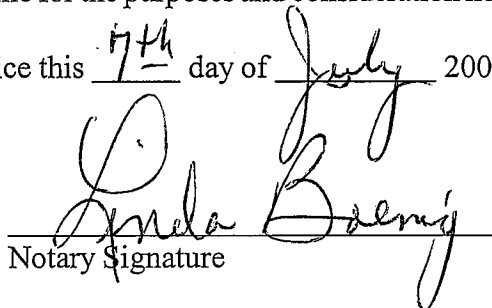


Rebecca M. Combs
Attorney
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Rebecca M. Combs, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 7th day of July 2009.

Notary Stamp



Notary Signature

